is to be proved guilty the burden is on the prosecution. It is not for the accused to prove his innocence.

With regard to ground (d), counsel for the defence quoted section 173(j) of the Criminal Procedure Code which runs as follows:—

"If the accused does not plead guilty to the charge as amended or if no amendment is made the accused shall then be called upon to enter upon his defence and to produce his evidence and shall at any time while he is making his defence be allowed to recall and cross-examine any witness present in the Court or its precincts."

According to the learned counsel this section gives absolute and unqualified right to the defendant to recall witnesses. At page 28 para. C of the record the learned President disallowed his application to recall PW1 and gave no reason for the rejection.

Rose C.J. in the case of *Ong Boon Siang & Ors.* v. *Regina* [1] in his judgment stated —

"In the present case it cannot, in my view, be seriously disputed that the appellants were still making their defence at the time of their application. The application, therefore, should have been treated on its merits. Presumably in some cases a judge would be entitled to take the view that the application was frivolous or vexatious and might therefore properly be refused. The learned District Judge did not purport to disallow the application on the ground that it was frivolous or vexatious, but on the ground that it was out of time."

The learned Deputy Public Prosecutor in reply referred to *Mallal's* Criminal Procedure, 4th edition, page 592, under the heading of "Irregularity and Illegality" which says —

"The object of procedure is to enable the Court to do justice, but if, in spite of even a total disregard of the rules of procedure, justice has been done, there would exist no necessity for setting aside the final order which is just and correct simply because the procedure was wrong."

He submitted that this Court should consider the merits of the case and the evidence as a whole.

In my view, with respect, I agree with the judgment of Rose C.J. that unless the application was frivolous it should not be refused. In that case the reason for refusal was on the ground that it was out of time, but in the present case no reason at all was given. In my opinion the defence should be accorded the right to recall PW1 unless the application was frivolous or vexatious, otherwise it would occasion a failure of justice.

In the circumstances I consider this is a fit case for retrial. I therefore set aside the conviction and sentence of the Court below and send the case back for rehearing before another President of the Sessions Court.

Retrial ordered.

Solicitors: *S. Seenivasagam & Sons.*

THE COASTAL BUS CO. LTD. v. PUBLIC PROSECUTOR

[A. Cr. J. (Ismail Khan J.) June 9, 1962]

[Muar — Criminal Appeal No. 49 of 1961]

Road Traffic — Permit or licence — Failure of prosecution to produce permit — Charge not proved — Road Traffic Ordinance, 1958, ss.121 and 152.

Criminal Law and Procedure — Company with limited liability — Sentence — Imprisonment in lieu of payment of fine.

The appellant company and a driver employed by the appellant were charged under section 120(2), Road Traffic Ordinance, 1958, for failing to comply with the condition set out in a permit relating to the number of passengers to be carried and the learned Magistrate convicted the company to pay a fine of $500 and "or in default on failure of levy to imprisonment of four months" and the second appellant (the driver) to a fine of $50 or in default thereof, to 3 weeks' imprisonment. Both the appellants appealed. It was argued for the appellants that the learned Magistrate failed to direct himself to the fact that the prosecution had failed to produce Permit No. 2035, and had therefore failed to prove a breach of the condition of the permit.

Held: (1) having regard to reg. 3(4) of the Motor Vehicles Commercial Use Regulations the permit or licence contemplated by sections 121 and 152 respectively of the Road Traffic Ordinance must refer to the comprehensive permit. As the prosecution did not produce this comprehensive permit the contravention whereof which formed the subject of the charge could not be said to have been proved;

(2) the sentence of imprisonment in default of payment of fine on the 1st appellant was clearly wrong as the 1st appellant was a limited liability company.

[**Editorial Note:** The learned Judge did not comment on the charges against the appellants. It would appear that both the company and the driver are referred to as owners in the charge.]

CRIMINAL APPEAL.

F. Keith Sellar for the appellants.

Tengku Rithauddin (Deputy Public Prosecutor) for the respondent.

Ismail Khan J.: The 1st appellant is a limited company and is the owner of motor bus No. JA. 6402, and the 2nd appellant is the driver thereof employed by the 1st appellant. The charge against the 1st appellant and the amended charge against the 2nd appellant were respectively as follows:—

"That you on the 10th day of January, 1961 at about 11.20 a.m. at Jalan Pantai, in the District of Batu Pahat, in the State of Johore, being the registered owner of M/Bus No. JA. 6402, did permit the said vehicle in contravention of a condition attached to P.S.V. Permit No. 2035 issued under sections 118 and 119 of the Road Traffic Ordinance, 49/58, to wit, did carry 22 passengers an excess of 6 passengers and that you have thereby committed an offence punishable under section 120(2) of the Road Traffic Ordinance, 49/58.

That you on the 10th day of January, 1961, at about 11.20 a.m. at Jalan Pantai, in the District of Batu Pahat, in the State of Johore, being the registered owner of Motor Bus No. JA. 6402 did permit the said vehicle in contravention of a condition attached to the P.S.V. permit No. 2035, issued under sections 118 and 119 of the Road Traffic Ordinance, 49/58, to wit, did carry 22 passengers, an excess of 6 passengers, and that you have thereby committed an offence punishable under section 120(2) of the Road Traffic Ordinance, 49/58."

The facts which are not in dispute are these. At about 11.20 a.m. at Jalan Pantai, Batu Pahat, P.W.1 in charge of a police mobile patrol saw the said bus proceeding in the direction of Minyak Beku carrying what he suspected to be more than the authorised number of passengers. The police stopped the bus and it was found to carry 22 passengers while it appeared from the permit produced that the number of passengers authorised was 16. Both the appellants were tried together. The learned Magistrate convicted both the appellants. The 1st appellant was sentenced to pay a fine of $500 and "or in default on failure of levy to imprisonment of four months". The 2nd appellant was sentenced to pay a fine of $50 in default thereof three weeks' imprisonment. Both the appellants appealed against this decision.

Several grounds of appeal were urged on behalf of the appellants, but the main ground was that the learned Magistrate failed to direct himself to the fact that the prosecution had failed to produce Permit No. 2035 and had therefore failed to prove a breach of the condition of the permit. The charges refer to Permit No. 2035. This is clearly not the number of the permit but the number of the badge of the driver of the bus, the 2nd appellant. (See the report P2). However, it does not appear that either of the appellants was prejudiced or misled as Permit No. 16706 in respect of the said bus (P1) was produced at the trial and the appellants were therefore well aware that the charge was in respect of a contravention of a condition in P1. P1 sets out the condition regarding the number of passengers but it also refers to a comprehensive Permit No. 71 kept at the 1st appellant's office.

This is not one of the cases where the charge is one of driving an unlicensed vehicle where the burden of establishing the contrary is thrown upon the accused. The appellants were charged with having failed to comply with the condition set out in the permit relating to the number of passengers to be carried and it was therefore for the prosecution to prove the condition said to have been contravened. The prosecution relied upon P1. The question for determination was whether P1 was admissible to prove the condition. P1 was issued on 30th December, 1957, and appeared to be, on the face of it, under Regulation 3 of the Motor Vehicles Commercial Use Regulations as amended by the Motor Vehicles Commercial Use (Amendment) Regulations, 1948. These Regulations were made under the Road Transport Proclamation No. 17 of 1945 which has since been repealed. Section 121 of the Road Traffic Ordinance however provides for the continuance of permits granted under the said Regulations for periods set out in section 122. Again under section 152 of the Road Traffic Ordinance it is provided that any licence granted under the Proclamation and the Regulations made thereunder shall be deemed to be granted under the Ordinance and shall be in force for periods stated in such licence. Under regulation 3(1) of the said Motor Vehicles Commercial Use Regulations it is provided that "no person shall use a motor vehicle or cause suffer or permit a motor vehicle to be used as a stage carriage . . . . unless such motor vehicle is an authorised vehicle". Regulation 2(1)(a) defines "authorised vehicle" as a motor vehicle authorised to be used under a permit issued under these regulations, and a stage carriage as a public service vehicle carrying passengers for hire or reward at separate fares. Regulation 3(3) reads:—

> "For the purpose of this regulation a motor vehicle shall not be deemed to be an authorised vehicle unless it is used by the holder of a permit in accordance with the conditions of such permit."

Regulation 3(4) reads:—

> "No person shall use a motor vehicle or cause suffer or permit a motor vehicle to be used as a stage carriage unless such use is authorised by a road service licence issued by the Commissioner authorising such use by such person:
>
> Provided that for the purpose of this paragraph a comprehensive permit issued by the Commissioner under these Regulations shall be deemed to be a road service licence during the period of the validity thereof."

The word "permit or licence" is not defined either in the Regulations or in the Ordinance, but in my opinion the permit or licence contemplated by section 121 and section 152 of the Road Traffic Ordinance respectively having regard to regulation 3(4) must refer to the comprehensive permit. This is borne out, in my view, by regulation 4(2) of the Motor Vehicles Commercial Use Regulations which says that the conditions set out in the Second Schedule hereto shall apply to and be the conditions of the respective permits under Parts I, II and III of the said Schedule. It is to be observed that Part I of the Second Schedule is concerned with conditions affecting permits to operate a service of stage carriages. Among the conditions set out therein is one relating to the number of passengers authorised to be carried on the vehicle. What was produced by the prosecution was not this comprehensive permit which would set out all the conditions in the Second Schedule and therefore the condition the contravention whereof formed the subject of the charge could not be said to have been proved in the Court below. This ground of appeal must therefore succeed.

There is one observation which I would like to make as to the sentence in respect of the 1st appellant. The 1st appellant is a limited company. The sentence of imprisonment in default of the payment of fine is clearly wrong. I therefore allowed the appeal and quashed the conviction, set aside the sentence and ordered the fines paid to be refunded.

Appeal allowed.

Solicitors: *Sault, Keith Sellar & Co.*

JAGJIT SINGH v. REGINA

[A. Cr. J. (Chua J.) July 2, 1962]

[Singapore — Magistrate's Appeal No. 78 of 1962]

Criminal Law and Procedure — Autrefois acquit plea — Previous acquittal on similar charge — Whether plea maintainable.

Road Traffic Ordinance (Cap. 227), s.13 — Motor Vehicles (3rd Party Risks and Compensation) Ordinance, 1960, s.3.

The appellant was charged before a magistrate with an offence under section 13(1) of the Road Traffic Ordinance of driving a motor-cycle without a driving licence. The appellant held a driving licence but it was not a licence which entitled him to drive a motor-cycle — a Class II Vehicle. The licence was in respect of Class III Vehicles (motor-cars) and Class IV Vehicles (heavy motor-cars).

At the trial before the magistrate the appellant pleaded *autrefois acquit* on the ground that in June 1955, i.e. some six years earlier he had been charged with a similar offence to wit, driving a motor-cycle without a driving licence when he held the same driving licence and at that trial in 1955 he was found not guilty and acquitted. The magistrate overruled the plea of *autrefois acquit*. On appeal,

Held: the plea of *autrefois acquit* was rightly rejected. The right to plead *autrefois acquit* depends on the principle that a man shall not be put twice in jeopardy for the same offence. It was clear on the evidence in this case that the present offence of riding a motor-cycle without a driving licence was not the same offence with which the appellant was charged in 1955; it was a distinct and separate offence.

Case referred to:—

(1) *Rex* v. *Barron* 10 Cr. App. R. 81 at p. 87.

MAGISTRATE'S APPEAL.

K. K. Bezboruah for the appellant.

Sachi Saurajen (Deputy Public Prosecutor) for the respondent.

Chua J.: The appellant was charged before the Magistrate with an offence under section 13(1) of the Road Traffic Ordinance of driving a motor-cycle without a driving licence and with an offence under section 3(2) of the Motor Vehicles (Third-party Risks & Compensation) Ordinance, 1960, of using the motor-cycle whilst not covered by third-party insurance.

The facts are shortly these. At about 1.30 p.m. on the 27th August, 1961, Lance Corporal 1370 of the Mobile Squad stopped the appellant who was on motor-cycle SAB. 5311 for a spot check. The appellant produced his driving licence (Ex. D3) but it was not a licence which entitled him to drive a motor-cycle — a Class II vehicle. The licence was in respect of Class III vehicles (motor-cars) and Class IV vehicles (heavy motor-cars). Lance Corporal 1370 explained to the appellant the offence that he had committed and took down all the particulars and made a report and the appellant was subsequently charged with these two offences.

At the trial before the Magistrate the appellant pleaded *autrefois acquit*, but his plea was overruled. The appellant was found guilty of the two charges and was fined $25 on the first charge and $300 on the second charge. He was also disqualified from holding or obtaining a Class II driving licence for a period of 12 months.

He has appealed to this Court and his main ground of appeal is that the Magistrate was wrong in rejecting the plea of *autrefois acquit*.

The plea was made on these facts. On the 22nd June, 1955, in Summons Case No. 6691 of 1955, the appellant was charged before a Magistrate with two offences: (1) driving a motor-cycle without a driving licence and (2) driving the motor-cycle whilst not covered by third-party insurance. The facts in that case were shortly as follows. On the 27th February, 1955, at 12.10 a.m., P.C. 3018 was on rounds at Bukit Timah Road on a motor-cycle. He saw a motor-cycle J. 6132 moving ahead of him in the same direction without a red tail light. He stopped the motor-cycle. The appellant was the rider. He checked the driving licence produced by the appellant and found that it was endorsed for Class III and Class IV vehicles only and not for motor-cycles. The driving licence produced by the appellant to P.C. 3018 was the same driving licence which was produced to Lance Corporal 1370 in the present case, i.e. Ex. D3. The appellant was found not guilty of driving a motor-cycle without a driving licence but was found guilty of driving without third-party insurance on his plea of guilty.

Mr. Bezboruah for the appellant contends that in the circumstances of this case the appellant can plead *autrefois acquit* to the present charge of driving a motor-cycle without a licence. I have carefully considered the arguments that were put forward by Mr. Bezboruah and the cases that were cited to me and I am of the opinion that the plea of *autrefois acquit* was rightly rejected.

The principle upon which a plea of *autrefois acquit* should be dealt with was stated by Lord Reading in the case of *Rex* v. *Barron* (1), where he said:

> " The principle on which this plea depends has often been stated. It is this, that the law does not permit a man to be twice in peril of being convicted of the same offence (4 Hawkins P.C. 311; B. II c. 35). If, therefore, he has been acquitted, i.e., found to be not guilty of the offence, by a Court competent to try him, such acquittal is a bar to a second indictment for the same offence. This rule applies not only to the offence actually charged in the first indictment, but to any offence of which he could have been properly convicted on the trial of the first indictment. Thus, an acquittal on a charge of murder is a bar to a subsequent indictment for manslaughter, as the jury could have convicted of manslaughter."